

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1993

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Legislative Document

No. 1311

H.P. 980

House of Representatives, April 22, 1993

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**An Act to Change the Railroad Fire Protection Laws.**

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Submitted by the Department of Conservation pursuant to Joint Rule 24.  
Received by the Clerk of the House on April 20, 1993. Referred to the Committee on Transportation and 1200 ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative BAILEY of Farmington.  
Cosponsored by Representatives: COLES of Harpswell, GOULD of Greenville, Senator:  
GOULD of Waldo.

Be it enacted by the People of the State of Maine as follows:

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4       Sec. 1. 12 MRSA §9405, as amended by PL 1987, c. 464, §1, is repealed.

6       Sec. 2. 12 MRSA §9405-A is enacted to read:

8       §9405-A. Railroad right-of-way; director may order flammable materials removed

10       A person, firm or corporation operating a railroad on or through forest, brush, grass-covered land or areas of high-value property shall maintain its right-of-way according to the minimum standards established in this section by destroying, removing, or modifying so as not to be flammable any vegetation or other flammable material as defined in this section. The director or an authorized agent is the final authority as to whether material is considered a fire hazard.

20       1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

24       A. "Authorized agent" means any forest ranger of the State.

26       B. "Authorized railroad representative" means a person designated by a railroad to accept a legal summons and other documents.

30       C. "Distance" means horizontal distance and not slope distance.

32       D. "Fire hazard" means a condition resulting from a combination of the factors of ease of ignition, heat yield, and rate of fire spread as influenced by particular vegetation and other flammable materials, weather and slope.

38       E. "Flammable material" includes, but is not limited to, grass, weeds, brush, logs, waste railroad ties refuse material, debris, dead and desiccated vegetation and all materials that burn easily. "Flammable material" does not include:

44       (1) Wooden poles or towers and cross arms supporting switching circuits or other electrical power or communication conductors; or

48       (2) Wooden components of trestles, tunnels and other structures.

2 F. "Forest, brush and grass-covered land" means land  
4 covered wholly or in part by timber, trees, brush, shrubs,  
6 grass, including grain and hay and other natural  
8 vegetation. Cultivated agricultural land planted to crops  
10 other than grain or hay are not included.

12 G. "Operator" means the person or entity responsible for  
14 maintenance of the railroad right-of-way.

16 H. "Railroad-caused fire" means a preventable fire  
18 resulting from operations upon a railroad right-of-way. It  
20 does not mean unpreventable fires such as caused by wrecks,  
22 bombs or natural causes such as lightning.

24 I. "Right-of-way" means the strip of land, outside of yard  
26 limits, owned or controlled by the person or entity  
28 operating a railroad for a distance not exceeding 100 feet  
30 or to the property boundary measured at right angles to the  
32 axis of the rail at any given location. The distance must  
34 be measured from the outermost rail on both sides of the  
36 mainline or mainlines, on sidings, and also includes  
38 intervening strips between sidings and mainlines.

40 J. "Towpath" means a narrow strip of right-of-way adjacent  
42 to each side of ballast that is commonly referred to as the  
44 walkway and is normally kept clear for personnel safety and  
46 is not less than 6 feet from outside rail to outer edge.

48 K. "High-value property" means homes, structures, fuel  
50 tanks, cut forest products, equipment and other improvements  
52 that are near the right-of-way and at risk should a fire  
54 start on the right-of-way.

56 2. Minimum standards. A railroad right-of-way must be  
58 maintained and kept in compliance with the following minimum fire  
60 hazard reduction standards.

62 A. The area within 7 feet of outside of rail, including  
64 ballast and towpath, must be kept clear of flammable  
66 material that by its physical arrangement or its  
68 accumulation is likely to contribute to the propagation of  
70 railroad-caused fires.

72 B. For the area within 25 feet of outside of rail,  
74 including ballast and towpath, the minimum 7-foot standard  
76 is extended to 25 feet if such an area has experienced one  
78 or more railroad-caused fires in the previous 5 years. An  
80 identified fire-start area must be maintained free of  
82 accumulation up to 25 feet as specified for 1/4 mile linear

2 distance on either side of the fire-start area and along  
3 both sides of the rail track.

4 C. Where a right-of-way passes through an area of  
5 high-value property and the right-of-way contains sufficient  
6 flammable material so that a fire starting on the  
7 right-of-way could travel to and threaten the high-value  
8 property, the minimum 7-foot standard is extended to 25 feet.

10 3. Communications. The bureau shall inform annually a  
11 railroad company operating within the State of the 5-year fire  
12 occurrence and the areas that are high-value property along its  
13 right-of-way. In addition, the bureau shall notify a railroad  
14 company of new forest fire occurrence and changes in high-value  
15 property as they are observed.

16 A railroad company shall notify the bureau of the name and  
17 mailing address of its authorized railroad representative on the  
18 effective date of this section and thereafter whenever the name  
19 or mailing address changes.

22 4. Failure to maintain. Failure to maintain a railroad  
23 right-of-way as provided in this section constitutes a  
24 violation. For the purposes of this section, every day from  
25 January 1st of the calendar year in which the violation occurred  
26 and continuing until full compliance is achieved is a separate  
27 offense.

28 5. Legal service. Legal service of a summons under this  
29 section occurs when a legal summons is delivered in person or by  
30 certified mail, return receipt requested, to the railroad  
31 company's authorized representative.

34 **Sec. 3. 12 MRSA §9703, as amended by PL 1991, c. 591, Pt. E,**  
35 **§12, is further amended to read:**

36 **§9703. Partial payment of costs of suppressing forest fires**

38 Any person who intentionally or negligently causes a fire  
39 that burns forest, brush, grass or other lands or intentionally  
40 fails to take reasonable action to control a fire on that  
41 person's own land is liable civilly for restitution of costs  
42 incurred by state or municipal government entities in the  
43 suppression of that fire, up to the maximum amount of restitution  
44 permitted under section 9321. Compliance with an ~~approved plan~~  
45 pursuant ~~to~~ section 9405 9405-A does not relieve a railroad  
46 company of liability under this section.

48 **Sec. 4. Effective date.** This Act takes effect January 1, 1994.

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## STATEMENT OF FACT

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6 Fires caused by railroads are a significant source of forest  
8 fires in Maine. The existing law requiring railroad companies to  
10 remove flammable materials from their rights-of-way to prevent  
12 forest fires is cumbersome and unworkable for both the regulated  
14 railroads and the Maine Forest Service resulting in delays in the  
16 removal of fire hazards such as grass and brush directly adjacent  
to the tracks. This bill establishes minimum standards for the  
maintenance of rights-of-way and requires railroad companies to  
meet those standards. The bill clarifies when penalties become  
effective. The bill also provides for a delayed effective date  
to give railroads time to plan for and meet the standards.